

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

SHANNON R. DAVIS, #K-74025,

Plaintiff,

-vs-

WARDEN BATES, S.A. GODINEZ, JOHN
SHEPARD, and DEBBIE ISAAC,

Defendants.

No. 12-168-MJR-SCW

DEFENDANT'S MOTION FOR SANCTIONS

NOW COMES the Defendant, DEBBIE ISAACS, by and through her attorney, Lisa Madigan, Attorney General for the State of Illinois, and moves for sanctions pursuant to Federal Rule of Civil Procedure 37(d)(1)(A) due to Plaintiff's failure to participate in the discovery process.

Defendant provides the following in support of her motion:

1. On February 24, 2012, Plaintiff initiated a lawsuit by filing a complaint pursuant to 42 U.S.C. § 1983. [d/e 1].
2. On August 9, 2013, Plaintiff was released from prison to serve a period of mandatory supervised release. See IDOC Offender Search at <http://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx>.
3. Plaintiff has not updated his address with the Court.
4. Because the undersigned counsel for Defendants knew that Plaintiff had been released, the undersigned searched for an alternate address for Plaintiff on the Offender Tracking System. That search brought up a last known address of 400 N. Cherry Street, Morrison, Illinois. (OTS printout attached as Exhibit 1).

5. On February 28, 2014, Defendant served on Plaintiff a notice of deposition to his last known address, advising Plaintiff that his deposition was scheduled to be taken on March 26, 2014, at 9:00 a.m. at 500 S. Second Street, Springfield, Illinois 62706. (Attached Ex. 2).

6. A court reporter was retained and she and the undersigned waited for about 45 minutes for Plaintiff but he failed to appear. Having received no communications from Plaintiff regarding the noticed deposition, the deposition was eventually called off. (Ex. 3).

7. Rule 37 allows a party to move for sanctions where the opposing party fails to appear for his deposition after being served with proper notice. Fed. R. Civ. P. 37(d)(1)(A)(i).

8. The bill for the court reporter and the record of Plaintiff's failure to attend came out to \$81.60. (Ex. 4).

9. At the very least, Plaintiff should be required to reimburse Defendant for those costs. Fed. R. Civ. P. 37(d)(3).

10. Furthermore, the Defendant has been prejudiced by Plaintiff's failure to attend the deposition or call the undersigned to make other arrangements. Discovery closed on April 1, 2014.

11. As of the date of filing this motion, the undersigned has received no phone call or other communication from Plaintiff concerning the scheduled deposition.

12. Accordingly, this case should be stayed pending Plaintiff's payment of the costs associated with Plaintiff's failure to attend the deposition. Fed. R. Civ. P. 37(d)(3) & 37(b)(2)(A)(iv).

13. If Plaintiff refuses or is unable to pay, the case should be dismissed as an appropriate sanction under those circumstances. Fed. R. Civ. P. 37(d)(3) & 37(b)(2)(A)(v).

WHEREFORE, the Defendant respectfully requests that this Court enter an order imposing sanctions upon Plaintiff for failing to attend the scheduled deposition by compelling Plaintiff to reimburse Defendant for the costs and expenses, including court reporter fee, associated with the March 26, 2014, deposition. Additionally, Defendant respectfully requests that this Court enter a stay in this case pending Plaintiff's payment of those costs and expenses.

Respectfully submitted,

DEBBIE ISAACS,

Defendant,

LISA MADIGAN, Attorney General,
State of Illinois,

Attorney for Defendant,

By: s/Lisa Cook
Lisa Cook, #6298233
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CERTIFICATE OF SERVICE

I hereby certify that on Lisa Cook, presented the foregoing Defendant's Motion for Sanctions to the Clerk of the Court for filing and uploading to the CM/ECF system, which will send notification of such filing to the following:

None

and I hereby certify that on April 16, 2014, I have mailed by United States Postal Service the document to the following non-registered participant:

Shannon R. Davis, #K-74025
400 N. Cherry St.
Morrison, IL 61270

Respectfully submitted,

s/Lisa A. Cook

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